

United States House of Representatives
BEFORE THE COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON TELECOMMUNICATIONS AND THE INTERNET

THURSDAY, MARCH 30, 2006

HEARING TO CONSIDER H.R. _____, A COMMITTEE PRINT
ON THE COMMUNICATIONS OPPORTUNITY, PROMOTION
AND ENHANCEMENT ACT OF 2006

STATEMENT OF DAVID J. KEEFE

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Thank you, Mr. Chairman. My name is Dave Keefe, and I am the CEO of Atlantic Broadband and a board member of the American Cable Association. My independent cable company, Atlantic Broadband, serves customers in six states. ACA represents 1,100 smaller and medium-sized cable companies that primarily serve smaller markets and rural areas located in every state.

Our members proudly invest their own capital into their systems to provide many of the services today that your legislation intends to promote. The advanced video and high-speed Internet access we offer in many of our more rural markets often represents the only option our customers have to avoid being on the losing end of the “digital divide.”

I would like to separate my remarks today into two distinct elements.

First, I would like to briefly give ACA's commentary on the language currently in the Committee Print.

Second, and more importantly, I would like to mention the one issue that ACA strongly urges the Committee to include in the legislation if it wants to ensure that the stated goal of promoting and enhancing broadband development and the many exciting services it can bring with it is to be realized by the consumers in the smaller and rural markets we serve.

To start and in regards to the Committee Print, there are three issues I would like to address.

First, while we did not ask Congress to alter the franchising rules and have largely enjoyed a productive relationship with our local franchising authorities, we do not oppose the language in the Committee Print and appreciate the Committee Print taking on these reforms in a technology and competitively neutral manner.

Second, the language pertaining to “net neutrality” is another issue the ACA has not pursued with Congress. ACA member companies are still examining the effects of this language and I would ask if the Association be able to follow up with more specific comments soon. In the interim and on behalf of virtually all of our ACA member companies that currently offer high-speed Internet service in smaller and rural markets, I do not today see this language as posing monumental concerns at this time to ACA.

Lastly, while competition is something our members welcome and currently experience on multiple fronts, we do have concerns with municipal overbuild efforts in the communities we have already invested in and would urge the Committee to encourage municipalities to invest in areas that are currently unserved by existing providers.

In short, on behalf of the members of the American Cable Association, we do not oppose the Committee Print and appreciate the Chairman taking out of the Committee Print the market test based language we had seen in previous drafts.

Having said this, the American Cable Association cannot support legislation that is silent on what we consider to be the fundamental issue facing our members in rural and smaller markets across this country, specifically the market abuses we witness on a daily basis by the programmers as a result of retransmission consent rules and regulations that are just as ripe for reform as the franchising rules you have addressed in the Committee Print. We are not alone in recognizing this need for retransmission consent reform. In fact, EchoStar, the National Telecommunications Cooperative Association, OPASTCO, and the Broadband Service Providers Association have joined forces to push for reform. The common link among these diverse voices is the fact that we are not vertically integrated and do not own programming.

Retransmission Consent rules were put in place 14 years ago to allow the local broadcaster to seek compensation from the local cable operator for carriage of that local broadcast signal. These rules were put into place as an alternative to broadcasters' must-carry rights which if exercised, obligate the pay-television provider to carry a broadcast station. In addition to this guarantee of carriage – whether it be for free via must-carry or for a price via retransmission consent – the government also granted the broadcaster exclusivity rights in any given local broadcast market to ensure that a competing channel in a neighboring market cannot be substituted.

These anti-competitive rules allow the broadcaster to be the sole supplier of a broadcast network in a given market with absolute pricing power and the leverage to pull their broadcast signal from the provider. No wonder the NAB and the big networks are fighting to make no changes to the current retransmission consent regime! Over the past 14 years, the growing media consolidation we have seen in the broadcasting community has allowed for this regulatory regime to be manipulated to guarantee profit for the four network conglomerates and major broadcast groups.

Retransmission consent and exclusivity, coupled with vastly increasing media consolidation, provide the means today for broadcasters and networks to extract increased costs from consumers and to force carriage of unwanted bundles of programming that appeal only to the bottom line of advertisers.

The broadcasters argue that they do not “require” cable and satellite operators to carry channels they do not want. Our members experience something quite different. While they may not “require” us to take undesirable programming, they instead provide us with a Hobson’s choice: Either take the vast menu of other channels – no matter if they are objectionable, indecent, undesirable or invaluable to consumers in our markets – at increased prices and you can have our local affiliate at a reasonable price, OR don’t take the whole menu and get gouged for the price of the stand-alone affiliate.

Clearly, these retransmission consent negotiations have evolved into simple exercises to increase the bottom line of the Big Four television networks and the major broadcast groups: if we choose to carry additional programming whether our

subscribers find it offensive or not, the broadcaster will make their profit on additional ad revenue and additional programming fees for the unwanted programming. If we choose to answer our market's demands and carry only the broadcast channel, the broadcaster will extract their profit more directly from my customers and your constituents through direct cash payments.

The members of the American Cable Association are not asking for you to give us the broadcast signal for free. Rather, we ask that Congress address our inability to "negotiate" as a direct result of the market Congress dictated and designed.

Pay-television providers, particularly those in smaller and rural markets, have no leverage against these programming conglomerates. We are offered a price and left with the option to take or leave it.

We are simply asking for your help to level the playing field so that a real economic market can dictate the true cost and value of programming.

Broadcasters have attempted to discredit our concerns as misguided. Naturally, as the beneficiaries of the current regime, they plead for you to make no changes to the current retransmission consent regime. However, I would urge you to not only listen to what the broadcasters say to Congress, but also look at what they tell Wall Street.

CBS President and CEO Les Moonves was quoted earlier this month as saying that retransmission consent negotiations could "amount to hundreds of millions of dollars in revenue to the CBS network." Sinclair CEO David Smith told an investor conference earlier this month that he plans to quadruple retrans revenue to \$100

million within 3 years, saying that, "It's very clear to us everybody is going to pay; the only issue is what day and how much."

Again, we are not asking for the broadcast signal for free, but I do ask, how does a process that gives this much leverage to a few conglomerates to increase revenue at an alarming rate by pushing down costs and carriage to my members and your constituents promote localism? How does this help control cable and satellite rates? How does this give more flexibility and options to operators to deliver programming people want to see?

You may ask "why is this relevant to the Committee Print we examine today?" I am here today to tell you that if the goal of this legislation is to inject competition in the marketplace in order to lower rates, you cannot inject competition only on the provider side of the equation. You must also assess the competition in the video programming market.

If the government wants to uphold market exclusivity for the local broadcaster and allow him to seek compensation for his signal, fine. But Congress must also have a mechanism – whether it be accountability, transparency or competition for reigning in the egregious compensation sought by the broadcaster and paid for by the consumer.

The current archaic regulatory-governed marketplace for programming gives the video provider two options: take it, or leave it. If an operator decides to 'leave it', he is abandoning localism. If he agrees to 'take it', he is raising cable rates for his subscribers.

Video over IP, which is what your bill intends to promote, will be an exciting way that consumers will have choices and options they have never seen or experienced before. Do you really want to promote the build out of these pipes and leave analog-world rules in place that limit the operators' flexibility in offering various packages of programming and impede the innovation we all envision from flowing through them?

I urge you to see the same problems that ACA, Echostar, the National Telecommunications Cooperative Association, OPASTCO and the Broadband Service Providers Association see. Retransmission Consent, as currently constructed, is broken and must be fixed for this bill to achieve its stated goal. All the competition and infrastructure in the world is useless if the content is controlled by a select few who can use an outdated regulatory scheme to extract profits at any rate they see fit.